

1 HON. RICARDO S. MARTINEZ  
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7 UNITED STATES DISTRICT COURT  
8 FOR THE WESTERN DISTRICT OF WASHINGTON  
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10 UNITED STATES OF AMERICA, )  
11 ) No. CR12-098RSM  
12 Plaintiff, ) SENTENCING MEMORANDUM  
13 v. )  
14 DJUAN O. GARDNER, )  
15 )  
16 Defendant. )  
17 \_\_\_\_\_

18 On the evening of January 17, 2011, Mr. Gardner was observed by officers in a  
19 patrolling cruiser as he was sitting in a parked car after business hours in an empty parking  
20 lot. Upon realizing he was being observed Mr. Gardner attempted to flee. As a result of that  
21 incident Mr. Gardner's advisory sentencing guideline range in this case has gone from 24-30  
22 months<sup>1</sup> to 84-105 months.<sup>2</sup> While the Court is required to correctly calculate Mr. Gardner's  
23 advisory sentencing guidelines and give due deference to the resulting advisory sentencing  
24 range, when a single poor choice such as this can affect a defendant's guideline calculations  
25 and sentencing range as much as that, the Court has reason to question the utility of the  
Sentencing Guidelines to arrive at a just term of confinement for the criminal conduct Mr.  
Gardner committed in this case.

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<sup>1</sup> Base Offense Level 12 + 4 2K2.1(6) – 3 acceptance of responsibility = TOL 13 CHC IV

<sup>2</sup> Base Offense Level 22 + 4 2K2.1(6) – 3 acceptance of responsibility = TOL 21 CHC V

True, Djuan has screwed up more than just a few times, but Djuan is not a mean spirited person. Although Djuan may lack direction and marketable skills, he understands the value of family and the need to be a good parent. Many will be in the courtroom on Friday to attest that they love Djuan, that he is a good son/father/friend and that his heart is in the right place. While Djuan is a CHC V, he is not the ordinary CHC V. The six months Djuan has spent at the FDC is already the longest sentence he has ever served.

Djuan wants to conquer his drug addiction and intends to work on his GED while in the BOP. But even after completing this Court's term of confinement, before his release to the street as a result of this conviction, Djuan will have to face another judge, a King County Superior Court judge. Djuan still has to be sentenced for violating the community custody portion of his DOSA on that same Eluding offense. This Eluding continues to haunt Djuan and will dictate an unwarranted harsh sentence unless this Court reins in the impact of that violation of law.

For these reasons, and others to be argued *ore tenus*, the defense recommends the Court impose a 37 month term of confinement. Such a term of confinement is sufficient but not greater than necessary to punish Mr. Gardner for the crime he committed in this case.

Respectfully submitted,

s/Robert M. Leen

Robert M. Leen  
Attorney for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing pleading under seal with the Clerk of the Court using the CM/ECF system this 10th day of October 2012. Any non-CM/ECF party has been served via facsimile or email.

s/Robert M. Leen

Robert M. Leen